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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

S.C.,

Petitioner,

v.

SUPERIOR COURT OF MENDOCINO  
COUNTY,

Respondent;

MENDOCINO COUNTY DEPARTMENT  
OF SOCIAL SERVICES et al.,  
Real Parties in Interest

A140160

(Mendocino County  
Super. Ct. No. SCUKJVSQ131679201)

**INTRODUCTION**

S.C., the biological father of O.F., filed this writ petition challenging the denial of his request for presumed father status and reunification services, and the setting of a Welfare and Institutions Code<sup>1</sup> section 366.26 hearing. We conclude substantial evidence supports the court's finding that S.C. was not the presumed father, and the court did not err in denying reunification services.

**PROCEDURAL AND FACTUAL BACKGROUND**

We set forth the facts to the limited extent necessary to address the issues raised by the petition. The Mendocino County Department of Social Services (Department)

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

filed a petition on June 6, 2013, alleging O.F., born a few days earlier, came within the provisions of section 300, subdivisions (b) and (j). The petition alleged O.F.'s mother (Mother) had severe mental health issues, O.F.'s siblings had been abused or neglected and Mother had failed to make any progress in the plan relating to the siblings, and S.C. was unable to adequately protect the child because he was aware of Mother's mental health issues yet continued to reside with her.

The detention report indicated social workers responded to the hospital the same day Mother gave birth to O.F. A social worker asked S.C., who was in the hospital room, if he was the father of the baby. S.C. "stated he wanted a DNA test because he did not know if he was the father of the child. He requested that the DNA test be conducted immediately. [A social worker] explained that the hospital did not conduct DNA testing and that arrangements would be made through Child Support for testing to be conducted. [S.C.] insisted that the hospital could do DNA testing 'right now' and a nurse explained that [the social worker] was right, that the hospital does not conduct DNA testing." A social worker asked S.C. what his last name was, but he refused to give it and questioned why he was being asked. When the social worker explained he may have certain rights because he may be the baby's father, S.C. still refused to give his last name. The social worker gave S.C. notice of the detention hearing in three days, but S.C. refused to accept the documents. The surname given to the baby was not S.C.'s, but the surname of Mother's husband. Both Mother and S.C. initially resisted detention of the infant, but after police arrived at the hospital, the infant was detained.

At the detention hearing, Mother told the court she believed S.C. was the biological father of O.F., but confirmed she was married to a different man. The court asked S.C. if he was the father of the baby, and he responded "I think so." S.C. was asked if he wanted paternity testing, to which he replied "Yes." S.C.'s attorney asked that "the DNA testing happen as soon as possible because whether [S.C.] proceeds in this matter depends upon that." Both Mother and S.C. indicated they received mail at the same address. The court detained the infant and ordered the DNA testing.

The jurisdictional report indicated a social worker spoke with S.C. on July 5 and explained the infant would not be placed with him because he was “in a relationship” with Mother, who is incapable of caring for a child. S.C. stated he could care for the child with help “from his daughter and ex-wife.” He also indicated he sees nothing wrong with Mother, believes “the doctors who evaluated her are wrong,” and intends to continue their relationship. The social worker stated “Despite me telling him that [Mother] is the reason he does not have his child, he remains in a relationship with her. They live together in his home with his children and his ex-wife.”

At the jurisdictional hearing, S.C. appeared but submitted on the Department’s report. His attorney indicated S.C. “does understand he has the right to testify and contest this allegation and decided not to take that avenue today.” The court found him to be the biological father based on the results of the DNA tests, and ordered supervised visitation for S.C. The court ordered Mother have no visitation, and that she not be present at S.C.’s visits.

S.C. requested presumed father status, and the hearing on that issue was held on October 24, 2013. The court denied S.C.’s request for presumed father status. S.C. also requested reunification services under section 361.5, subdivision (a), as the biological father, which the court denied.

The court set the section 366.26 hearing for February 20, 2014.

## **DISCUSSION**

### **Presumed Father Status**

S.C. maintains the court erred in denying him presumed father status. “ ‘We review a juvenile court’s determination of presumed parentage status under the substantial evidence standard.’ [Citation.]” (*In re D.A.* (2012) 204 Cal.App.4th 811, 824 (*D.A.*).)

The Uniform Parentage Act, Family Code section 7600 et seq., “ ‘provides the statutory framework for judicial determinations of parentage, and governs private adoptions, paternity and custody disputes, and dependency proceedings.’ [Citation.]” (*D.A.*, *supra*, 204 Cal.App.4th at p. 824.) Family Code section 7611 sets forth several

rebuttable presumptions under which a man may qualify as a presumed father. As pertinent here, it provides a man may be a child's presumed father if he "receives the child into his . . . home and openly holds out the child as his . . . natural child." (Fam. Code, § 7611, subd. (d).) "Presumed fatherhood, for purposes of dependency proceedings, denotes one who 'promptly comes forward and demonstrates a full commitment to his paternal responsibilities—emotional, financial, and otherwise [.]' " (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801–802.)

Under certain circumstances, "a man may acquire all of the rights of a presumed father without meeting the requirements of any of the [section 7611] presumptions. Under [*Adoption of*] *Kelsey S.* [(1992) 1 Cal.4th 816], 'an unwed biological father who comes forward at the first opportunity to assert his paternal rights after learning of his child's existence, but has been prevented from becoming a statutorily presumed father under section 7611 by the unilateral conduct of the child's mother or a third party's interference' acquires a status 'equivalent to presumed parent status under section 7611.' [Citation.]" (*D.A., supra*, 204 Cal.App.4th at p. 824.) " 'Once the father knows or reasonably should know of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and his circumstances permit. In particular, the father must demonstrate "a willingness himself to assume full custody of the child—not merely to block adoption by others.'" [Citation.] 'A court should also consider the father's public acknowledgement of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child.' [Citation.]" (*In re Zacharia D.* (1993) 6 Cal.4th 435, 450, fn. 19.)

S.C. urges he meets the requirements of a statutory presumed father, despite never physically receiving O.F. into his home, based on *In re A.A.* (2003) 114 Cal.App.4th 771 (A.A.). In that case, two men, the biological father and the de facto father, sought presumed father status, and the court initially found the de facto father was the presumed father. (*Id.* at p. 778.) After learning the results of the paternity test showed the second man was the biological father, the court held the biological father was the presumed father instead. (*Ibid.*) The Court of Appeal reversed, holding the de facto father had held

himself out as the minor's father, and "[a]lthough the minor was not received into [the de facto father's] home to live with him *on a full time basis*, he was involved with the minor from the very beginning . . . ." (*Id.* at p. 784, italics added.) He "treated the minor as if she were his own child[,] . . . tak[ing] the minor . . . to his home for visits and buy[ing her] clothes, food, toys and other essentials." (*Id.* at p. 783.) In contrast, there was no evidence the biological father had held the child out as his own, or that the minor was received into his home. (*Id.* at pp. 786–787.) Nor was "there evidence that the minor was received into respondent's home on a consistent visitation basis." (*Id.* at p. 786.)

Unlike the presumed father in *A.A.*, S.C. never received the child into his home, even for visits, and never provided for him financially with "clothes, food, toys and other essentials." (*A.A.*, *supra*, 114 Cal.App.4th at p. 783.) Nor did he "step up to the plate" and seek placement of the infant as soon as he was removed from Mother, as the presumed father in *A.A.* did. (*Id.* at p. 784.)

Acknowledging he never physically received O.F. into his home, S.C. maintains he is a "*Kelsey S.*" presumed father. He asserts he "has done everything he can legally do to assert his parental rights and accept his parental obligations since the child was detained by [the Department] at birth."

S.C. did not meet either prong of the *Kelsey S.* test. First, the record does not indicate S.C. came " 'forward at the first opportunity to assert his paternal rights after learning of his child's existence.' " (*D.A.*, *supra*, 204 Cal.App.4th at p. 824.) The existence of O.F. was not a surprise to S.C., given that Mother was in a relationship with and living with S.C. and his wife while Mother was pregnant, and continued to do so both before and after the birth of O.F. Furthermore, prior to O.F.'s birth, Mother identified S.C. as the father to a psychologist to whom she was referred by the Department in the proceedings regarding two of her other children. Despite this, there was "no evidence of any prenatal involvement" on S.C.'s part. S.C. was at the hospital with Mother the day of O.F.'s birth. Nevertheless, when asked if he was the father of the infant, he responded that he wanted a DNA test. He also refused to give social workers his last name, despite the social worker's explanation to S.C. that they needed his name because he may have

rights if he was the father. S.C. also refused to accept the documents about the detention hearing. The baby was given the last name of Mother's husband, not that of S.C.

S.C. asserts he "clearly stated at the detention hearing that if he was found to be the biological father, he wanted to raise his child and be the child's father." What the transcript shows, however, is that his attorney indicated "whether [S.C.] proceeds in this matter depends [on the results of the DNA testing]."

After DNA testing confirmed S.C. was O.F.'s father, the court ordered supervised visits. S.C. attended eight out of 14 scheduled visits, arriving almost an hour late to the first and calling in sick for five visits. He also brought Mother to the first visit, knowing she was not allowed to attend. The social worker reported S.C.'s behavior was appropriate during each of the hour-long visits. However, S.C. never provided the baby with any financial support or material needs, "not a bottle, not a toy, not an outfit" according to the social worker.

Likewise, S.C. did not meet the second prong of the *Kelsey S.* test. That is, the evidence did not show he was " 'prevented from becoming a statutorily presumed father . . . by the unilateral conduct of the child's mother or a third party's interference.' " (*D.A., supra*, 204 Cal.App.4th at p. 824.) Though S.C. asserts the Department was the third party who interfered by refusing to place the infant with him in his home, the evidence demonstrates the failure to place O.F. with him was due to his own actions. The social worker explained "Despite me telling him that [Mother] is the reason he does not have his child, he remains in a relationship with her. They live together in his home with his children and his ex-wife." Further, S.C. stated he believed nothing was wrong with Mother, and disagreed with the assessments of the mental health professionals who had examined her. Thus, the evidence demonstrates it was S.C.'s insistence on remaining in a relationship with Mother and allowing her to live with him, despite knowledge of her mental health issues, that prevented the minor from being placed in his home. Substantial evidence supports the trial court's findings.

## Denial of Reunification Services

S.C. maintains that even in the absence of presumed father status, the court erred in denying him reunification services as the biological father under section 361.5, subdivision (a).

Section 361.5, subdivision (a) provides in part “Upon a finding and declaration of paternity by the juvenile court . . . the juvenile court *may* order services for the child and the biological father, if the court determines that the services will benefit the child.” (§ 361.5, subd. (a), italics added.) The “statute makes reunification services mandatory for presumed fathers but *discretionary* for biological fathers.” (*In re Raphael P.* (2002) 97 Cal.App.4th 716, 725, fn. 7, italics added.)

S.C. first maintains the juvenile court applied the wrong standard, “clear and convincing evidence that offering services to the mere biological father would be in the child’s best interest.” The record reflects the court found “by clear and convincing evidence that it’s *not* in the child’s best interest to offer reunification services to the biological father,” as well as indicating “I don’t make a finding that it’s in the best interest of the child for the biological father to receive services.” (Italics added.) The court was not required to find by clear and convincing evidence that it was *not* in the child’s best interest to offer services. The fact that it made that stringent finding certainly does not demonstrate the denial of services was an abuse of discretion; on the contrary, the court essentially gave S.C. every benefit of the doubt.

S.C. asserts reunification services would benefit the child because he “showed the ability to care for [O.F.]’s needs during his visits and [O.F.] deserves to have the biological relationship with his father preserved.” The evidence showed S.C. had eight one-hour supervised visits with the child, during which his behavior and care for the child was appropriate. The record reflect reflects no evidence, however, that the infant had any bond with S.C., or even knew who he was. The evidence that S.C. could care for the infant during one-hour supervised visits, combined with the biological connection, is simply not enough to demonstrate the court abused its discretion to deny reunification services to the biological father.

### **DISPOSITION**

S.C.'s petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The stay of the section 366.26 hearing ordered on February 11, 2014, is lifted forthwith. This decision is final immediately as to this court. (Cal. Rules of Court, rule 8.490(b)(2)(A).)



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Banke, J.

We concur:

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Dondero, Acting P. J.

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Becton, J.\*

A140160, *S.C. v. Superior Court of Mendocino Co.*

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\* Judge of the Contra Costa County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.